



PLANNING BOARD
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2022 ZONING BYLAW AMENDMENTS

Article 1 To see if the Town will vote to amend and reformat Section 02.00, entitled Definitions by adopting the following definitions, or take any action relative thereto

DEVELOPMENT: means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOOD BOUNDARY AND FLOODWAY MAP: means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM): An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

FLOODWAY (also referenced as Regulatory Floodway): The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

FUNCTIONALLY DEPENDENT USE: means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE: means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE: means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

- (1) By an approved state program as determined by the Secretary of the Interior or

- (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59]

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NEW CONSTRUCTION: Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE: means a vehicle which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59]

SPECIAL FLOOD HAZARD AREA: The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]

START OF CONSTRUCTION: The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

STRUCTURE: means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE: means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION: means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

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Article 2

To see if the Town will vote to replace section 09.05, entitled the Floodplain District with the proposed language as shown below, or take any action relative thereto

Section 09.05

Original:

.01 Purpose:

To promote the health, safety, and general welfare of the inhabitants of the Town of Tisbury by ensuring that structures, facilities, and uses are sited, constructed, and arranged so as to preclude or minimize Flood/Storm effects.

To protect the economic well-being of the Town of Tisbury and its inhabitants by preventing burdensome property and employment losses.

To make available to the inhabitants of the Town of Tisbury Flood Insurance (under the National Flood Insurance Program) and to the Town of Tisbury eligibility for federal disaster relief funds by establishing and maintaining a qualifying Flood/Storm Program conforming to the "Flood Disaster Protection Act of 1968" (Title 13 of the Housing and Urban Development Act of 1968 - Public Law 90-448), 42 U.S.C. 4001-4128 and 44 CFR 67, the specific enumerations found in 44 CFR section 60.3(e) and such amendments thereto as are applicable.

To accomplish the purposes set forth in the above three paragraphs by uniform administrative procedures, conformity with land and water use policies, and in keeping with objectives to preserve the character of Tisbury's waterfronts.

.02 Floodplain District Boundaries:

The Floodplain District is herein established as an overlay district to all other districts. The District includes all special flood hazard areas within the Town of Tisbury designated as Zone A, AE or VE on the Dukes County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Dukes County FIRM that are wholly or partially within the Town of Tisbury are panel numbers 25007C0082J, 25007C0083J, 25007C0084J, 25007C0101J, 25007C0102J, 25007C0103J, 25007C0104J and 25007C0111J dated July 20, 2016.

The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Dukes County Flood Insurance Study (FIS) report dated July 20, 2016. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

All development in the district, comprised of all land in the Town of Tisbury inland of the Mean Low Water (MLW) line lying along the shores of Lake Tashmoo, Vineyard Sound, Vineyard Haven Harbor and Lagoon Pond, including structural and non-structural activities whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code (CMR 780) which addresses flood plain and coastal high hazard areas.
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)

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- Inland Wetlands Restriction, Department of Environmental Protection DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, Department of Environmental Protection DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, Department of Environmental Protection DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

.03 Floodway Data:

In Zones A, A1-A30, and AE, along watercourses that have not had a regulatory floodway designated the best available federal, state and local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood (flood having a one percent chance of being equaled or exceeded in any given year) discharge.

.04 Notification of Watercourse Alteration

In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- a. Adjacent communities,
- b. NFIP State Coordinator

Massachusetts Department of Conservation and Recreation – 251 Causeway Street,
Suite 600-700, Boston, MA 02114-2140

- c. NFIP Program Specialist

Federal Emergency Management Agency
99 High Street, 6th Fl, Boston, MA 02110

.05 Use Regulations:

Man-made alteration of sand dunes within Zone VE which would increase potential flood damage are prohibited.

All new construction within Zones VE must be located landward of the reach of mean high tide.

All subdivision proposals must be designed to assure that:

- a. Such proposals minimize flood damage;
- b. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- c. Adequate drainage is provided to reduce exposure to flood hazards.

Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

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.06 Basis:

Administrative and regulatory address to construction, facilities, uses and arrangements shall be based upon:

- Mean Sea Level (MSL) elevation as determined by the “National Geodetic Vertical Datum of 1929” (NGVD 1929);
- North American Vertical Datum (NAVD) 1988
- The Flood Insurance Rate Map

.07 Floodplain Rules and Regulations:

Coastal and Elevation Data Plans may be a required attachment for all properties in the Town of Tisbury located within all flood hazard zones, as defined by the Dukes County Flood Insurance Rate Maps.

There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, and Building Inspector for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

The cognizant Board, Commission or Official may require certifications by a Massachusetts Registered Professional Engineer(s) and Registered Land Surveyor (s) as to situations, designs, data, calculations, statements of effect or non-effect, values, ratings, specifications, etc.

.08 Exceptions, Waivers and Appeals:

Any variance to the requirements of state regulations or FEMA’s minimum standards for floodplain management must go through the proper state channels and conform to FEMA’s guidelines as listed in CFR 44, 60.0.

The applications, procedures and requirements relating to *EXCEPTIONS* (whether considered in the form of "Special Permits" or in the form of "Variances"), *WAIVERS* (pertinent only to Rules and Regulations) and *APPEALS* (whether an appeal from a determination or alleging a failure to act) are set forth in MGL Chapter 40A, elsewhere in the Zoning Bylaws and in the established administrative procedures of the cognizant Board, Commission or Official.

.09 Compliance:

The Building/Zoning Inspector shall:

- make site inspections and determinations of physical and use compliance in matters of specification particulars;
- ensure that the plans and specifications submitted as a part of Building Permit Applications comply; and,

.10 Enforcement:

The Building/Zoning Inspector shall enforce program or permit specification particulars, and the conditions and restrictions imposed by Special Permits, Waivers, Variances, and Appeal determinations, as provided for in Chapter 40A (MGL) and elsewhere in the Zoning Bylaws.

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In the manner, and to the extent, provided by law, cognizant Boards, Commissions and Officials may obtain enforcement of procedural, class or

category requirements by such processes as 'cease and desist orders', 'unfit for habitation or occupancy closures', and 'revocation or suspension of authorization'.

.11 Interpretation:

Notwithstanding any other Town of Tisbury Bylaw, this Section 09.05 (Floodplain District) and its provisions shall be determinative with regard to Flood/Storm hazards, the prevention or mitigation of Flood/Storm effects and the maintenance of qualifying status under the National Flood Insurance Program.

In the interpretation and application of this Section 09.05 (Floodplain District), all provisions shall be:

- considered as minimum requirements;
- liberally construed in favor of the Town of Tisbury;
- deemed neither to limit nor repeal any other powers granted under the statutes of the Commonwealth of Massachusetts.

.12 Penalties:

Whosoever violates the provisions of this Section 09.05 (Floodplain District) and the Rules and Regulations herein authorized and legally adopted may be fined two hundred dollars (\$200) for each violation and for each day each violation continues after notice or such lesser amount as may be set by statute.

Proposed:

.01 Purpose:

Ensure public safety through reducing the threats to life and personal injury;

Eliminate new hazards to emergency response officials;

Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;

Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;

Eliminate costs associated with the response and cleanup of flooding conditions;

Reduce damage to public and private property resulting from flooding waters.

.02 Floodplain District Boundaries:

The Floodplain District is herein established as an overlay district to all other districts. The District includes all special flood hazard areas within the Town of Tisbury designated as Zone A, AE or VE on the Dukes County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Dukes County FIRM that are wholly or partially within the Town of Tisbury are panel numbers 25007C0082J, 25007C0083J, 25007C0084J, 25007C0101J, 25007C0102J, 25007C0103J, 25007C0104J and 25007C0111J dated July 20, 2016.

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The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated July 20, 2016. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

All development in the district, comprised of all land in the Town of Tisbury inland of the Mean Low Water (MLW) line lying along the shores of Lake Tashmoo, Vineyard Sound, Vineyard Haven Harbor and Lagoon Pond, including structural and non-structural activities whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

Section of the Massachusetts State Building Code (CMR 780) which addresses flood plain and coastal high hazard areas.

Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

Inland Wetlands Restriction, Department of Environmental Protection DEP (currently 310 CMR 13.00);

Coastal Wetlands Restriction, Department of Environmental Protection DEP (currently 310 CMR 12.00);

Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, Department of Environmental Protection DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

.03 Floodway Data:

In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In A Zones, in the absence of FEMA BFE data and floodway data, the Building/Zoning Inspector will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

.04 Notification of Watercourse Alteration

In a riverine situation, the Building/Zoning Inspector shall notify the following of any alteration or relocation of a watercourse:

- a) Adjacent communities,
- b) NFIP State Coordinator - Massachusetts Department of Conservation and Recreation – 251 Causeway Street, 8th Floor, Boston, MA 02114-2140

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- c) NFIP Program Specialist - Federal Emergency Management Agency 99 High Street, 6th Fl,
Boston, MA 02110

.05 Use Regulations:

Alteration of sand dunes which would increase potential flood damage are prohibited.

All new construction within Zones VE must be located landward of the reach of mean high tide.

All subdivision proposals must be designed to assure that:

- a) Such proposals minimize flood damage;
- b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
- c) Adequate drainage is provided to reduce exposure to flood hazards.

Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

.06 Basis:

Administrative and regulatory address to construction, facilities, uses and arrangements shall be based upon:

- Mean Sea Level (MSL) elevation as determined by the "National Geodetic Vertical Datum of 1929" (NGVD 1929);
- North American Vertical Datum (NAVD) 1988
- The Flood Insurance Rate Map (FIRM)

.07 Floodplain Rules and Regulations:

Coastal and Elevation Data Plans may be a required attachment for all properties in the Town of Tisbury located within all flood hazard zones, as defined by the Dukes County Flood Insurance Rate Maps.

There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, and Building Inspector for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

The cognizant Board, Commission or Official may require certifications by a Massachusetts Registered Professional Engineer(s) and Registered Land Surveyor (s) as to situations, designs, data, calculations, statements of effect or non-effect, values, ratings, specifications, etc.

.08 Exceptions, Variances, Waivers and Appeals:

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Any variance to the requirements of state regulations or FEMA's minimum standards for floodplain management must go through the proper state channels and conform to FEMA's guidelines as listed in CFR 44, 60.0.

The applications, procedures and requirements relating to *EXCEPTIONS* (whether considered in the form of "Special Permits" or in the form of "Variances"), *WAIVERS* (pertinent only to Rules and Regulations) and *APPEALS* (whether an appeal from a determination or alleging a failure to act) are set forth in MGL Chapter 40A, elsewhere in the Zoning Bylaws and in the established administrative procedures of the cognizant Board, Commission or Official.

A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

.09 Variances to the Building Code Floodplain Standards

The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance and will maintain this record in the community's files.

The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

.10 Disclaimer of Liability

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

.11 Severability

If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

.12 Compliance:

The Town Tisbury requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

Tisbury's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits and must submit the completed checklist demonstrating that all necessary permits have been acquired.

When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

.13 Enforcement:

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The Building/Zoning Inspector shall enforce program or permit specification particulars, and the conditions and restrictions imposed by Special Permits, Waivers, Variances, and Appeal determinations, as provided for in Chapter 40A (MGL) and elsewhere in the Zoning Bylaws.

In the manner, and to the extent, provided by law, cognizant Boards, Commissions and Officials may obtain enforcement of procedural, class or category requirements by such processes as 'cease and desist orders', 'unfit for habitation or occupancy closures', and 'revocation or suspension of authorization'.

.14 Floodplain Administrator

The Building/Zoning Inspector shall be the official floodplain administrator for the Town of Tisbury.

.15 Interpretation:

Notwithstanding any other Town of Tisbury Bylaw, this Section 09.05 (Floodplain District) and its provisions shall be determinative with regard to Flood/Storm hazards, the prevention or mitigation of Flood/Storm effects and the maintenance of qualifying status under the National Flood Insurance Program.

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

In the interpretation and application of this Section 09.05 (Floodplain District), all provisions shall be:

- considered as minimum requirements;
- liberally construed in favor of the Town of Tisbury;
- deemed neither to limit nor repeal any other powers granted under the statutes of the Commonwealth of Massachusetts.

.16 Penalties:

Whosoever violates the provisions of this Section 09.05 (Floodplain District) and the Rules and Regulations herein authorized and legally adopted may be fined two hundred dollars (\$200) for each violation and for each day each violation continues after notice, or such lesser amount as may be set by statute.